

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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| In re: | Adv. Pro. No. 08-1789 (SMB) |
| BERNARD L. MADOFF INVESTMENT SECURITIES LLC, | SIPA LIQUIDATION |
| Debtor. | (Substantively Consolidated) |
| IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, | |
| Plaintiff, | |
| v. | |
| DEFENDANTS LISTED ON APPENDIX A ATTACHED HERETO, | Adv. Pro. Nos. listed on Appendix A Attached Hereto |
| Defendants. | |

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTIONS TO DISMISS**

The Defendants listed on Appendix A attached hereto (collectively, “Defendants”) have filed motions to dismiss (the “Motions to Dismiss”) complaints or amended complaints filed against them by Plaintiff Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”) and the substantively consolidated estate of Bernard L. Madoff (the “Complaints”).

On January 17, 2014 and March 10, 2014, the Trustee and the Securities Investor Protection Corporation (“SIPC”) filed separate memoranda of law opposing the Motions to

Dismiss (the “Opposition Briefs”). On or before March 17, 2014, certain Defendants filed reply briefs in further support of their respective Motions to Dismiss (the “Reply Briefs”).

On September 17, 2014, a hearing on the Motions to Dismiss was held by the Honorable Stuart M. Bernstein (the “Hearing”). Before and after the Hearing, various parties submitted supplemental authorities and other submissions to the Court. The Court, having reviewed the Motions to Dismiss, the Opposition Briefs, the Reply Briefs, the supplemental authorities and other submissions, and having heard the argument of counsel at the Hearing, granted in part and denied in part the Motions to Dismiss for reasons set forth in its Memorandum Decision Regarding Omnibus Motions to Dismiss (the “Decision”) entered June 2, 2015.

On June 22, 2015, the Supreme Court of the United States denied certiorari of the Trustee’s appeal of *SIPC v. Ida Fishman Revocable Trust*, 14-1128 and *Picard v. Ida Fishman Revocable Trust*, 14-1129 (the “Supreme Court Decision”), and thus section 546(e) of the Bankruptcy Code applies to those adversary proceedings identified on Appendix A attached hereto (the “Adversary Proceedings”).

Accordingly, it is hereby **ORDERED** that:

1. Pursuant to the Decision and the Supreme Court Decision, counts in each Complaint included on Appendix A, other than those seeking to avoid and recover initial transfers pursuant to sections 548(a)(1)(A), 550, and 551 of the Bankruptcy Code, are hereby dismissed.

2. As to counts in each Complaint included on Appendix A in which the Trustee sought to avoid obligations pursuant to sections 548(a)(1) and 544 of the Bankruptcy Code, applicable provisions of SIPA including sections 78fff(b) and 78fff-1(b) and New York Debtor

and Creditor Law (the “Obligations Counts”), the Motions to Dismiss are granted with respect to the Obligations Counts and such counts are hereby dismissed.

3. As to the count in each Complaint included on Appendix A seeking to recover subsequent transfers from subsequent transferee defendants pursuant to section 550(a) of the Bankruptcy Code, applicable provisions of SIPA including section 78fff-2(c)(3) and New York Debtor and Creditor Law (the “Subsequent Transferee Count”), the Motions to Dismiss are granted with respect to the Subsequent Transferee Count and such count is hereby dismissed from each Complaint without prejudice to (i) the Trustee’s right to seek to amend in accordance with Rule 15(a)(2) of the Federal Rules of Civil Procedure, made applicable hereto by Federal Rule of Bankruptcy Procedure 7015, and/or (ii) the Trustee’s rights under Section 550(f) of the Bankruptcy Code.

4. In all other respects, the Motions to Dismiss are denied.

5. Defendants shall file their answers to the Complaints on or before September 18, 2015. The Adversary Proceedings will move forward thereafter on schedules to be established by further order of the Court after consultation among the parties in accordance with the applicable rules of procedure.

6. This Court retains jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
July 16th, 2015

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

| APPENDIX A | | | |
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| | Adv. Pro. No. | Defendant(s) | Counsel for Defendant(s) |
| 1. | 10-05255 | Picard v. Stefanelli Investors Group, et al. | Delbello Donnellan Weingarten Wise & Wiederkehr, LLP |
| 2. | 10-04401 | Picard v. Rose Gindel Trust, et al. | Dentons LLP |
| 3. | 10-04925 | Picard v. Alvin Gindel Rev. Trust, et al. | Dentons LLP |
| 4. | 10-05085 | Picard v. Eugene J. Ribakoff 2006 Trust, et al. | Dentons LLP |
| 5. | 10-05224 | Picard v. David R. Markin, et al. | Dentons LLP |
| 6. | 10-05384 | Picard v. Neil Reger Profit Sharing Keogh, et al. | Dentons LLP |
| 7. | 10-05424 | Picard v. The Frederica Ripley French Rev. Trust, et al. | Dentons LLP |
| 8. | 10-04335 | Picard v. Aspen Fine Arts Co., et al. | Milberg LLP |
| 9. | 10-04741 | Picard v. William M. Woessner Family Trust, et al. | Milberg LLP |
| 10. | 10-04906 | Picard v. Steven V Marcus Separate Property of the Marcus Family Trust, et al. | Milberg LLP |
| 11. | 10-04966 | Picard v. Onesco International, Ltd., et al | Lax & Neville LLP/ Milberg LLP |
| 12. | 10-04978 | Picard v. Estate of Ira S. Rosenberg, et al | Milberg LLP |
| 13. | 10-04341 | Picard v. James P. Marden, et al. | Pryor Cashman LLP |
| 14. | 10-04348 | Picard v. Marden Family Limited Partnership, et al. | Pryor Cashman LLP |
| 15. | 10-04575 | Picard v. Boslow Family Limited Partnership, et al. | Pryor Cashman LLP |
| 16. | 10-04944 | Picard v. Pergament Equities LLC, et al. | Pryor Cashman LLP |
| 17. | 10-05118 | Picard v. Charlotte M. Marden, et al. | Pryor Cashman LLP |
| 18. | 10-05194 | Picard v. Bruce D. Pergament, et al. | Pryor Cashman LLP |
| 19. | 10-05439 | Picard v. Avram J. Goldberg, et al. | Pryor Cashman LLP |

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| 20. | 10-04352 | Picard v. RAR Entrepreneurial Fund LTD, et al. | Becker & Poliakoff LLP |
| 21. | 10-04362 | Picard v. Sage Associates, et al. | Becker & Poliakoff LLP |
| 22. | 10-04400 | Picard v. Sage Realty, et al. | Becker & Poliakoff LLP |
| 23. | 10-04712 | Picard v. Joseph S. Popkin Revocable Trust Dated February 9, 2006, a Florida Tr | Becker & Poliakoff LLP |
| 24. | 10-04718 | Picard v. The Jordan H. Kart Revocable Trust, et al. | Becker & Poliakoff LLP |
| 25. | 10-05157 | Picard v. The Harnick Brothers Partnership, et al. | Becker & Poliakoff LLP |
| 26. | 10-05196 | Picard v. Whitman 1990 Trust U/A DTD 4/13/90, etc., et al | Becker & Poliakoff LLP |